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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

CHANG, VICTOR S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1771

DATE MAILED: 01/30/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09-976,073

Examiner

Victor S Chang

Applicant(s)

SACHSE, HANS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a) and (b) and (c) however, a reply, if timely filed, after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply, specified above, is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If the period for reply, as specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Rejections not maintained are withdrawn.

### ***Response to Amendment***

3. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

While it is permissible to amend the Specification according to the patent which has been incorporated by reference, the amendment must find express or inherent support within the teachings of the incorporated by reference subject matter. It is noted that Applicant briefly stated that the amended Specification is supported by material taken from US 6015379. However, Applicant has failed to point out the express or inherent support in the reference for the amended subject matter found in the "BRIEF SUMMARY OF THE INVENTION", "BRIEF DESCRIPTION OF THE DRAWINGS", AND "DETAILED DESCRIPTION OF THE INVENTION", nor does the Examiner find the amendments to the aforementioned sections inherent. As such, the amended Specification appears to contain "new matter" which is not disclosed in US 6015379.

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4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In newly amended claim 1, line 1, the phrase "with transverse stiffening" is vague and indefinite, and appears to be redundant. Specifically, it is not clear to the Examiner whether the elastic tape has "transverse stiffening" property, or a component of the elastic tape having "transverse stiffening" property. Additionally, in line 4, the phrase "solid connection" is vague and indefinite.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Evans (US 5522787).

Evans' invention is directed to a soft, elastic support is provided with a semi-rigid stiffener (Abstract). Figs. 1 and 1A show an article with a support 11 which is made of a soft, but elastic or resilient material, such as cellular polyurethane or foam rubber. A stiffener 15 is adhered to the support 11 by the adhesive 13. The stiffener 15 is preferably an elongated bar of a semi-rigid material, such as Buna N, with a durometer hardness of about 65. The stiffener should be elastic and should resist bending so as to provide additional stiffness to the support 11 (column 2, lines 9-24).

For claim 1, it is believed that the stiffener of semi-rigid material is inherently homogeneous. As such, if the reference is not considered to be an anticipation, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to select suitable elastic tape and stiffening strip materials and attach the stiffening strip in transverse direction as taught by Evans, motivated by the desire to form an article with transverse stiffening effect.

8. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (US 5522787).

The teachings of Evans are again relied upon as set forth above.

For claims 2-3, Evans does not expressly teach the use of a stiffening strip formed from cured 2-component adhesive, however, it would have been obvious to one of ordinary skill in the art to adhere a suitable semi-rigid material to the surface of the elastic tape, such as a strip of cured 2-component adhesive, motivated by the desire to provide additional stiffness support, as taught by Evans.

For claims 4-6, it is believed that suitable curing conditions of 2-component adhesive are old and well known.

Finally, claims 7 and 8 are, if not inherent, believed to be within the skill of the art.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC  
January 28, 2003

CAROL J. JARKE  
PRIMARY EXAMINER  
GROUP ~~1000~~  
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*Carol Jarke*